

## **REMARKS**

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Claims 25-101 are now pending in this application. Each of claims 25, 46, 58, 75, and 81 is in independent form.

### **I. The 1.131 Declarations**

Applicant respectfully traverses the following assertion presented in the present Office Action:

the Declaration of Edward Drake filed on 9-30-9 under 37 CFR 1.131 has been considered but is ineffective to overcome the U.S. Pat. No. 6,259,701. The affidavit or declaration is inappropriate under 37 CFR 1.131 (a) because all inventors did not sign the declaration, i.e. Mr. Antonio Atwater's signature was missing from the declaration filed on 9-30-9.

Per the attached 1.131 Declaration of Mr. Andreas Geyer, who is the Intellectual Property Rights Administrator for Nokia Siemens Networks GmbH & Co, KG, the assignee of the present application:

- a. there is no reason to doubt any of the statements of Mr. Edward Drake included in the Declaration under 37 C.F.R. § 1.131 filed on 23 September 2009;
- b. the co-inventor of the present application, Mr. Antonio Atwater, is deceased;
- c. the fact of Mr. Atwater's death is evidenced by a memorial web page located at <http://www.viodi.tv/2007/07/31/atwater/> (attached to Mr. Geyer's Declaration); and
- d. because Mr. Atwater is deceased, it is not possible to produce his declaration under 37 C.F.R. § 1.131 or for him to co-sign the above-referenced Declaration of Mr. Edward Drake.

### **II. The Obviousness Rejections**

Via the present Office Action, each of claims 25-101 was rejected under 35 U.S.C. 103(a) as being obvious, and thus unpatentable, over various combinations of U.S. Patent 6,259,701

("Shur"), U.S. Patent 5,893,091 ("Hunt"), U.S. Patent 6,324,163 ("Alexanders"), U.S. Patent 7,051,103 ("Giroir"), and/or U.S. Patent 5,903,559 ("Acharya").

Previously filed was a 37 CFR § 1.131 Declaration of Edward Drake, an inventor of the present application. The facts set forth in Edward Drake's declaration establish the following:

1) the claimed subject matter claimed was conceived in the United States prior to the effective filing date (11 September 1997) of Shur; and

2) due diligence occurred in the United States from conception to the effective filing date of the present application.

Thus, Shur should be eliminated as a basis for the rejection. Upon elimination of Shur, the applied portions of the remaining references relied upon in the Office Action do not establish a *prima facie* case of obviousness. See MPEP § 2143. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

### **CONCLUSION**

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration of the application, withdrawal of all grounds of objection and rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

Date: 12 May 2010

/Michael N. Haynes/

USPTO Registration: 40,014

1341 Huntersfield Close

Keswick, VA 22947